IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MFA.No. 632 of 2000(A)

OPMV.1897/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/PETITIONER:

KUMARA MENON, S/O.KERALA VARMA, MYELIL HOUSE, UDAYAMPEROOR, TRIPUNITHURA. (DIED. LRs IMPLEADED)

ADDL. 2. RADHAMANY, WIFE OF LATE KUMARA MENON, AGED 66, MAYELIL HOUSE, UDAYAMPEROOR, TRIPUNITHURA.

" 3. M.K.SARALA, D/O.LATE KUMARAMENON AGED 35, MAYELIL HOUSE, DO. DO.

" 4. M.K.SINDHU, D/O.LATE KUMARA MENON, AGED 32, DO. DO.

(ADDL.APPELLANTS 2 TO 4 ARE IMPLEADED AS LRs OF DECEASED APPELLANT VIDE ORDER DATED 26.2.07 IN I.A.417/07)

BY ADV. SRI.H.SIVARAMAN
SRI.MATHEW CHERIAN

RESPONDENTS/RESPONDENTS:

1. PHILIP MATHEW, S/O.POTHEN, KANDEKERIL HOUSE, EDAPPALLY SOUTH VILLAGE, ELAMAKKARA DESOM, ERNAKULAM.

2. SUSAN PHILIP, W/O.PHILIP MATHEW, DO. DO.

3. THE ORIENTAL INSURANCE CO. LTD., KOTTAYAM.

BY SR. ADV. SRI.MATHEWS JACOB FOR R3

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.632 OF 2000

Dated 11th June, 2007

JUDGMENT

Koshy,J.

Appellant, who subsequently died after filing the appeal, met with a motor accident on 31.3.1994. He was aged 60 at the time of the accident. He claimed Rs.2,00,000/= as compensation. Total compensation awarded was Rs.1,00,700/= out of which more than Rs.50,000/= was granted for medical expenses. With regard to the injuries, the Tribunal has extracted the nature of injuries in paragraph 8 as follows:

> "8. It is proved by Exts.A5 and A6 that in the accident petitioner sustained lacerated wound (Lt) ankle 8cm x 2cm x 1cm abrasion forehead (Lt) hip, fracture shaft of (Rt) radius. It is further proved that wound debridement and suturing done, open reduction and internal fixation with DC plate done on 16.4.1994. He was admitted in the hospital on 31.3.94 and discharged on 16.5.1994."

Ext.A7 disability certificate was produced to show that there was 20% disability due to the injuries to the right hand fingers. But, the Tribunal correctly found that the above disability certificate cannot be accepted as in the wound certificate there is no injury to the fingers of the right hand or even to the right hand. However, considering the

fracture of the shaft of right radius, Rs.12,000/= was awarded for discomfort and inconvenience. Injured was a document writer. Tribunal has taken Rs.1,800/= as the monthly income. We see no ground to disturb the same. No amount was awarded for loss of earning power and permanent disability. Considering the fracture and long treatment he has undergone and nature of injuries, we are of the opinion that Rs.5,000/= can be awarded for disability and loss of earning power and we award the same. The appellant died during the pendency of the appeal and legal representatives were impleaded. The above Rs.5,000/= should be deposited by the third respondent insurance company with 8% interest from the date of application till its deposit. On deposit of the amount, appellants are entitled to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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